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EXAMINER

GRAHAM, GARY K

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1744

22

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Paper No. 22

Application Number: 09/445,046
Filing Date: February 18, 2000
Appellant(s): KOTLARSKI ET AL.

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GROUP 1700

Michael J. Striker
For Appellant

EXAMINER'S ANSWER

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This is in response to the appeal brief filed 28 February 2002.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is incorrect. A correct statement of the status of the claims is as follows:

This appeal involves claims 5-12 and 14.

Claims 1-4 and 13 have been canceled.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is incorrect.

The amendment after final rejection filed on 01 October 2001 has been entered.

The amendment after appeal filed 04 March 2002 has been entered.

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(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is incorrect. The changes are as follows:

Claims 5-7, 9-11 and 14 are rejected under 35 U.S.C. 102 over the patent to Arai.

Claims 9-12 and 14 are rejected under 35 U.S.C. 102 over the patent to Appel '770 as evidenced by Arai et al '326 not under 35 U.S.C. 103.

Claim 8 is rejected under 35 U.S.C. 103 over the patents to Arai and Appel. However, applicant presents no arguments with respect to this rejection and states under "Grouping of claims" that the dependent claims stand or fall with the corresponding independent claims. Thus, while claim 8 is rejected under 103 over Arai and Appel, the rejection of claim 8 does not appear to be at issue.

No claims stand rejected under 35 U.S.C. 112 in view of entry of the 01 October 2001 and 04 March 2002 amendments.

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(7) *Grouping of Claims*

Appellant's brief includes a statement that claims 5, 9 and 14 are separately patentable and do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

Claim 8 is considered to stand or fall with claim 5 in view of the statement under "Grouping of claims" and lack of arguments in support thereof.

(8) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) *Prior Art of Record*

4,028,770	Appel	14 June 1977
4,807,326	Arai et al	28 February 1989

(10) *Grounds of Rejection*

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 5-7, 9-11 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Arai et al '326.

The patent to Arai discloses the invention as is claimed, including a spring elastic carrying element or backing member (3) supporting a wiper blade strip (1) for movement over a windshield. Note figures 7 and 8 which show, at least under high pressure, the end sections of the wiper blade having a lower contact force compared with a center section thereof. Also, note figure 8 which shows the prior art backing member and wiper blade. Such prior art backing member is loaded centrally and provides high pressure centrally which drops off towards the ends of the backing member, at least under high loading. The figure 8 backing member/blade and graph clearly suggest the limitations of claim 5, specifically under high pressure. Figure 8 also shows an "almost uniform magnitude" in the center.

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With respect to claim 5 and the limitation that the wiper lip is constructed such that it tilts over in reversal positions in a region of a reduced contact force and continues to tilt in a region of greater contact force, such does not define over Arai. Firstly, such defines no structure not shown or suggested by Arai. Such is merely desired intended functioning. Second, tilting of the wiper lip during wiping direction reversal is conventional. Note figure 2 of Arai which shows conventional structure of a wiper strip (1), including head (1C) supporting wiping lip (1A) via a thin neck (1B). Neck (1B) allows the lip to tilt from side to side, depending on the direction of wiping. Such is the same structure shown by Appellant. Since Arai suggests a contact force that is reduced at the ends of the strip (fig.8, high pressure line) in like manner as appellants, tilting as is claimed will inherently occur. Why would Arai not tilt as is claimed?

With respect to claim 14 note figure 6 which shows the center section having a greater curvature than at least the right end section. Note that any "section" or portion of the carrying element may be selected to meet the claim. The section (3B) does appear to have a sharper curvature than the section (3A). A portion of section (3B) can be selected that has visible curvature while a portion of section (3A) can be selected that has no visible curvature. Such would appear to meet the claim.

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Claims 9-12 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Appel '770 as evidenced by Arai et al '326.

As applicant has claimed no structure to develop contact pressure, the patent to Appel discloses the invention as is claimed. Appel shows a conventional backing member/blade as is claimed, wherein in a free form state, prior to windshield application, such is prestressed or curved (figs. 1 and 2). The curvature is such that a center section of the backing member has a greater curvature than the end sections thereof. While not pronounced, such different curvatures does appear to be shown. Such curvature is provided such that upon application of the backing member/blade to the windshield, a substantially uniform pressure is achieved in the wiper blade. Appel discloses all the structure set forth by applicant. Applicant has only claimed a wiper blade. Thus, the device of Appel will inherently function as is claimed. Indeed, if sufficient pressure is applied to the conventional backing member of Appel, as discussed by Arai figure 8, the contact pressure in the center of the blade would be greater than end sections thereof, just as applicant's. Applicant has set forth no structure for his wiper blade that is not disclosed by Appel.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103© and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Arai et al '326 in view of Appel '770.

The patent to Arai discloses all of the above recited subject matter with the exception of the conventional backing member/blade of figure 8 being curved sharper than the windshield to be wiped and having a curvature in a center section sharper than in end sections.

The patent to Appel discloses all of the above recited subject matter.

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While Arai does not disclose the conventional backing member/blade being curved, it clearly must be pre-stressed. Without such pre-stressing, the backing member of Arai could not achieve the pressure profiles as shown in the figure 8 graph. A method of such pre-stressing is known and taught by Appel.

It would have been obvious to one of skill in the art to pre-stress the backing member by curving, as clearly suggested by Appel, to achieve the pressure profiles as is shown. Such curving is a well known and expedient manner of pre-stressing.

(11) Response to Arguments

The thrust of appellant's argument in support of claim 5 is that the claimed contact force distribution is different than the prior art and that such distribution leads to a reduced noise wipe by providing a more gradual tilting of the strip during wiping motion reversal. However, as stated above, the contact force distribution is not different than disclosed by the prior art. Arai specifically discloses in figure 8 that, under high arm pressure, the contact pressure of the wiper strip on the windshield is reduced at the ends of the wiper strip as compared to the center section. Thus, the tilting of the end sections of the strip first, followed by the center section would inherently be achieved by both Arai and Appel as evidenced by Arai. Further, it should be noted that such tilting is the desired functioning of the wiper strip and imparts no structure to the claim that is not disclosed by Arai. It is not clear why either of the references would not perform as is

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claimed. Since Arai discussed the contact force distribution as is claimed, why would the wiper strip not tilt as is claimed?

Appellant's arguments in support of claim 9 do not point out any structure that is not disclosed by either the patent to Arai or Appel as evidenced by Arai. As discussed above, the applied references both contain a center section and two end sections. Specifically, the patent to Arai clearly sets forth that the contact pressure at the end sections of conventional backing members (fig.8) is lower than at a central section where the pressure (P) is applied, at least during high pressure application. Such clearly meets the limitations of claim 9. Likewise, the backing member of Appel would have the same pressure profile as taught by figure 8 of Arai since the wiper arm is connected to a center section thereof.

Appellant's arguments in support of claim 14 that the end sections of the Arai carrying element are curved greater than the center section are not deemed persuasive. As discussed above, any portion of the center section and end section can be selected. Note that any "section" or portion of the carrying element may be selected to meet the claim. The section (3B) does appear to have a sharper curvature than the section (3A). A portion of section (3B) can be selected that has visible curvature while a portion of section (3A) can be selected that has no visible curvature. Such would appear to meet the claim. Appellant does not appear to specifically address the rejection of claim 14 by Appel. However, as stated above, a review of figure 2 of Appel will show that the center section has a greater curvature than the end sections. Use of a straight edge will demonstrate this.

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For at least the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

GKG

March 7, 2002

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